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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. AT&T CORP., AT&T INC. and DOES 1-20, inclusive, Defendants.	No. C-06-0672-VRW **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT AT&T CORP.'S MOTION TO DISMISS** [Fed. R. Evid. 201] Date: June 8, 2006 Time: 2 p.m. Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker Filed concurrently: 1. AT&T Corp.'s Motion to Dismiss 2. Proposed Order

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REQUEST FOR JUDICIAL NOTICE

Defendant **AT&T CORP.** ("AT&T") hereby requests that the Court take judicial notice of the following documents attached as Exhibits A through J. This request is made pursuant to Rule 201 of the Federal Rules of Evidence and the authorities cited below. This request is made in connection with AT&T's motion to dismiss the Amended Complaint for Damages, Declaratory and Injunctive Relief filed by plaintiffs Tash Hepting, Gregory Hicks, Carolyn Jewel and Erik Knutzen (Dkt. 8).

Exhibit	**Description**
A	Complaint in *American Civil Liberties Union et al. v. National Security Agency et al.*, Civ. 06-10204 (E.D. Mich. filed Jan. 17, 2006).
B	Complaint in *Center for Constitutional Rights v. Bush et al.*, Civ. 06-00313 (S.D.N.Y. filed Jan. 17, 2006).
C	Complaint in *Electronic Privacy Information Center v. Department of Justice*, Civ. 06-00096 (D.D.C. filed Jan. 19, 2006).
D	Complaint in *Al-Haramain Islamic Foundation, Inc., et al. v. Bush, et al.*, Civ. 06-274-MO (D. Ore. filed Feb. 28, 2006).
E	*United States v. al-Timimi*, Crim. No. 1:04cr385 (E.D.Va. Feb. 3, 2005) (superseding indictment).
F	*United States v. al-Timimi*, No. 05-4761 (4th Cir. Apr. 25, 2006) (order granting defendant's/appellant's motion to vacate and to remand).
G	*United States v. Aref, et al.*, Crim. No. 04-CR-402 (N.D.N.Y. Mar. 10, 2006) (order denying defendants' motion for reconsideration).
H	*United States v. Albanna*, Crim No. 02-CR-255-S (W.D.N.Y. Mar. 21, 2006) (order denying defendants' demand for information).
I	*United States v. Hayat, et al.*, Crim. No. S-05-240-GEB (E.D.Cal. Apr. 3, 2006) (order denying defendants' motion to compel discovery).
J	Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence (Dec. 19, 2005).[1]

BASIS FOR REQUESTING JUDICIAL NOTICE

On a motion to dismiss, a court may take judicial notice of matters of public record in accordance with Federal Rule of Evidence 201 without converting the motion to dismiss to a motion for summary judgment. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001) (citing *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986)). Courts may take judicial notice of documents outside of the complaint that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(d); *Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d 1117, 1109 (N.D. Cal. 2003). Courts can take judicial notice of such matters when considering a motion to dismiss. *Wietschner*, 294 F. Supp. 2d at 1109; *MGIC Indem. Corp. v. Weisman*, 803 F. 2d 500, 504 (9th Cir. 1986). As explained further below, the Court may take judicial notice of Exhibits A through J.

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[1] Available at http//www.whitehouse.gov/news/releases/2005/12/20051219-1.html.

Exhibits A through I: Courts may take judicial notice of proceedings in other courts. *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citing *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169 (10th Cir. 1979)) ("[W]e 'may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.'"). Exhibits A through D are complaints from the files of other federal district courts, and Exhibit E is a superseding indictment from the file of another federal district court, and Exhibits F through I are orders from the files of other federal courts. The contents of these filings are public records that are "not subject to reasonable dispute [and] capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). These exhibits reflect the proceedings in other federal courts, and are appropriate for judicial notice as set forth in *U.S. ex rel Robinson Rancheria Citizens Council*. AT&T requests that this Court take judicial notice of Exhibits A through I solely to demonstrate their existence and the similarity of the claims in those cases, and not for the truth of their contents.

Exhibit J: As stated in *Lee*, on a motion to dismiss, the court may take judicial notice of "undisputed matters of public record." *Lee*, 250 F.3d at 690. Exhibit J is a transcript of public statements made by members of the President's administration—Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence—and is undisputed and easily verifiable. Neither plaintiffs nor defendants challenge the authenticity or admissibility of Exhibit J. Indeed, plaintiffs also seek judicial notice of this document in their Request for Judicial Notice in Support of Plaintiffs' Motion for Preliminary Injunction (Dkt. 20-21, filed March 31, 2006). As plaintiffs argue in their Request for Judicial Notice, many courts have taken judicial notice of documents like Exhibit J. AT&T also asks this Court to take judicial notice of Exhibit J.

For the foregoing reasons, Exhibits A through J may properly be considered by the Court in ruling on AT&T's motion to dismiss.

Dated: April 28, 2006.

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